

46 (Amended) [The] A spinal rod coupler assembly [of claim 40

*157*  
further] comprising:

a coupler having a first opening to receive a spinal rod

a connecting member extending from the coupler;

a bone fastener positioned within the connecting member, wherein movement

*As*  
of the connecting member with respect to the coupler adjusts the position of the bone  
fastener; and

[further comprising] an insert mounted within the coupler and interposed  
between the spinal rod and connecting member.

### REMARKS

Claims 1-47 remain in this application. The applicants acknowledge with appreciation the allowance of claims 1-16 and 47. Claims 26, 27, 34, 35 and 46 were indicated as containing allowable subject matter if rewritten in independent form to include the limitations of the base claim and any intervening claims. Consequently, claims 34 and 46 have been rewritten in independent form and are believed to be in condition for allowance.

Claims 17-25, 28-33 and 36-45 were rejected under 35 U.S.C. §102 as anticipated by U.S. Patent No. 5,562,662 to Brumfield, et al. Claims 17, 22-25, 28, 29, 33, and 40-45 were rejected under 35 U.S.C. §102 as anticipated by U.S. Patent No. 5,254,118 to Mirkovic.

Claim 17 has been amended to further define the opening in the coupler member to receive a spinal rod. The claim requires the opening to fully surround a portion of the spinal rod. Thus, the portion of the spinal rod is fully enclosed by the coupler member. In contrast, the Brumfield patent discloses a hook 25 which clips onto the rod. Mirkovic also fails to disclose an opening fully surrounding the spinal rod. As illustrated in the drawings, a U-shaped opening is provided. Thus, the Brumfield and Mirkovic patents do not meet the

limitations of claim 17 as amended and therefore the rejection under 35 U.S.C. §102 should be withdrawn.

Claim 36 has been amended in a similar manner to better define the first opening as fully surrounding a portion of the spinal rod. The claim has also been amended to recite that the third opening is dimensioned to slidably and rotatably receive an elongated connector. As noted above, the Brumfield patent does not disclose an opening for receiving and surrounding the spinal rod. Furthermore, although stem 131 of Brumfield is slidably received within rod connector 29, it is not rotatable therein. Therefore, Brumfield fails to disclose or suggest a third opening in the coupler to rotatably receive an elongated connector for mounting a bone fastener. Note that the recitation of longitudinal axes of the various openings (in claim 36 as well as the other claims) is utilized to identify the orientation of the openings with respect to each other.

Independent claim 40 as amended recites a coupler having a first opening to receive a spinal rod and fully surround a portion thereof, a connecting member having a longitudinal axis and extending from the coupler and rotatable with respect to the coupler, a bone fastener positioned within the connecting member wherein movement of the connecting member with respect to the coupler adjusts the position of the bone fastener, and a locking member for securing the spinal rod and extending at an angle to the longitudinal axis of the connecting member. As with claims 17 and 36, the first opening for receiving a spinal rod is defined to fully surround a portion thereof which distinguishes over the hook and U-shaped openings of Brumfield and Mirkovic, respectively. Furthermore, Brumfield does not disclose a connecting member rotatable with respect to the coupler since, as pointed out above, stem 131 is only slidable with respect to rod connector 29. Claim 40 also recites a locking member for securing the spinal rod which extends at an angle to the longitudinal axis of the connecting member. As disclosed in Mirkovic, the set screw 60 extends through hole 62 parallel to the longitudinal axis of slide pin 42. Consequently, claim 40 is believed to distinguish over the Brumfield and Mirkovic references.

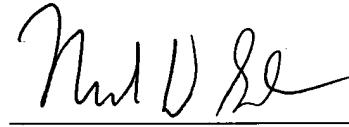
Claims 18-33 and 35 depend from independent claim 17, claims 37-39 depend from independent claim 36, and claims 41-45 depend from independent claim 40. Therefore,

these dependent claims are believed patentable for at least the same reasons that the independent claims are believed patentable.

Applicants submit that the present application is now in condition for allowance. Prompt and favorable reconsideration of this application is respectfully requested. The examiner is invited to contact the undersigned should she believe this would expedite prosecution of the application respectfully submitted.

Respectfully submitted,

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